

E-FILED on 02/12/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TOKYO ELECTRON LIMITED,

Plaintiff,

v.

SPANSION, INC.,

Defendants.

No. C-09-00502 RMW


ORDER DENYING MOTION TO PROCEED
EX PARTE**[Re Docket No. 11,13]**

On February 6, 2009, plaintiff Tokyo Electron Limited ("TEL") moved to proceed *ex parte* in their application for a right to attach order against Spansion, Inc. ("Spansion"). On February 10 the court denied the motion, finding that TEL had not showed that grievous harm or irreparable injury would occur if Spansion were given notice.

TEL now moves, again *ex parte*, to shorten time for the hearing on its right-to-attach order. TEL does not cite any statute, Federal Rule, local rule, or standing order permitting it to proceed *ex parte* in seeking to shorten time, as required by Local Rule 7-10. Rather, TEL states that it moves, "as invited by the Court in its Order of February [10], 2009, on a *Ex Parte* basis, for an Order Shortening Time for an immediate hearing before this Court" The court did not intend, in its February 10, 2009 order, to invite an *ex parte* motion to shorten time. Rather, the court was emphasizing that TEL could seek an accelerated schedule while giving Spansion notice. Under Local Rule 6-3(b), a motion to shorten time must be served on all parties.

1 With its motion to shorten time, TEL files an additional press release and some financial
2 analysis documents prepared by TEL, both of which seem to support TEL's claim that Spansion is
3 having financial difficulties. But the existence of those financial difficulties do not justify the relief
4 TEL requests: the scheduling of a hearing and the order that a \$44,550,025.00 bond be deposited
5 with the court, all before Spansion has an opportunity to appear. The court would consider setting a
6 hearing on very short notice but believes Spansion is entitled to notice absent some evidence of an
7 intent to secrete assets.

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11 DATED: 02/12/09



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff:**

3 Daniel J. Herling herling@khlaw.com

4 **Counsel for Defendants:**

5 No appearance filed.

6
7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

9
10 **Dated:** 02/12/09

JAS
Chambers of Judge Whyte

United States District Court
For the Northern District of California